MONTANA LEGISLATIVE HISTORY

Chapter 528 19 81

Bill H _____ S 238 Original bill & history ✓C

H. Committee on Judiciary

Hearing Date(s) _____ ___C

3/20 ✓C

_____ ___C

3/25 ✓C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) 2/5 ✓C

2/7 ✓C

2/19 ✓C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

FREE CONFERENCE COMMITTEE: 4/16/81

SENATE BILL NO. 238

INTRODUCED BY STORY

IN THE SENATE

January 22, 1981	Introduced and referred to Committee on Judiciary.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, pass consideration.
	On motion taken from second reading and rereferred to Committee on Judiciary. Motion adopted.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.

March 26, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 92; Noes, 7.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 3, 1981	Second reading, amendments concurred in.
	On motion segregated from report of Committee of the Whole.
April 4, 1981	On motion consideration be passed for the day.
April 10, 1981	Second reading, amendments not concurred in.
April 11, 1981	On motion Conference Committee requested and appointed.
April 15, 1981	Conference Committee dissolved.
	On motion new Free Conference Committee requested and appointed.
April 16, 1981	Free Conference Committee reported.
April 17, 1981	Second reading, Free Conference Committee report adopted.

April 17, 1981	Third reading, Free Conference Committee report adopted. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

April 21, 1981	Free Conference Committee report adopted.

IN THE SENATE

April 22, 1981	Returned from house. Sent to enrolling.
	Reported correctly enrolled.

LC 2101/01

INTRODUCED BY Senate Story BILL NO. 238

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 25-10-101 AND 25-10-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-10-101, MCA, is amended to read:

"25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in his favor in the following cases:

(1) in an action for the recovery of real property or damages thereto;

(2) in an action to recover the possession of personal property where the value of the property exceeds $50; such value shall be determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action which involves the title or possession or right of possession of real estate; or the legality of any tax, impost, assessment, toll, or municipal fine; or quo warranto proceedings;

(6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

(7) in an action arising out of the ownership, maintenance, or use of a motor vehicle."

Section 2. Section 25-10-302, MCA, is amended to read:

"25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, and 71-3-124, and [section 3] need not be included in the cost bill if they are made a part of the judgment."

NEW SECTION. Section 3. Attorney's fees -- motor vehicle claim. In an action involving solely the recovery of damages for the damage to or the loss of use of a motor vehicle, in which the plaintiff secures a judgment greater than the amount offered to the plaintiff by the defendant or by his agent prior to the filing of the cause of action, the court shall allow, as part of the costs, plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make any offer, after having been requested to do so by the plaintiff, before the filing of the cause of action, the plaintiff, if successful in the action, shall be entitled to his reasonable attorney's fee under this provision.

Section 4. Codification instruction. Section 3 is

INTRODUCED BILL
SB 238

intended to be codified as an integral part of Title 25, chapter 10, part 3, and the provisions of Title 25, chapter 10, apply to section 3.

-End-

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 182	1/20/81	2/03/81	2/06/81			2/06/81			
SB 182	2/18/81	held to kill							
SB 196	1/21/81	transferred to Natural Resources							
SB 201	1/21/81	1/29/81	1/30/81		1/30/81				
SB 203	1/21/81	1/29/81	1/30/81		1/30/81				
SB 209	1/21/81	2/13/81	2/13/81		2/13/81				
SB 214	1/21/81	tabled							
SB 216	1/29/81	2/10/81	2/11/81	2/11/81					
SB 219	1/22/81	2/10/81	2/20/81			2/20/81			
SB 222	1/22/81	2/06/81	2/07/81			2/07/81			
SB 224	1/22/81	2/09/81	tabled	2/18/81					
SB 227	1/22/81	2/09/81	2/11/81	Tie vote -- taken out on Senate floor.					
SB 238	1/23/81	2/05/81	2/07/81			2/07/81			
SB 238	2/11/81	back for correction - sent back out 2/19/81							
SB 240	1/23/81	2/05/81	2/20/81			2/20/81			
SB 245	1/23/81	2/13/81	2/14/81			2/14/81			

Use a separate sheet for Senate, House Bills, and Resolutions.

and stated that recorded instruments were stored on microfilm, which would save room.

Also speaking in favor of the bill were Tom Stoll, Administrator of the Inheritance Tax Division of the Department of Revenue; Tom Ryan, Montana Senior Citizens Association; Ed Sheehy, of the Retired Federal Employees; and Bill Romine, representing the Montana Clerk and Recorders Association. Mr. Romine stated that under the proposed system of recording, assessors and abstractors would be able to find the pertinent documents much more easily. Additionally, the forms would not be so easily misplaced.

CONSIDERATION OF SENATE BILL 238:

AN ACT TO PROVIDE COURT COSTS AND ATTORNEY FEES TO A SUCCESSFUL PLAINTIFF IN ACTION INVOLVING VEHICLE OWNERSHIP, USE, ETC.

Senator Storey presented the bill and described it as one which would help make a prompt, fair settlement of "fender-bender" type car accidents.

Bill Romine supported the bill, stating that it would discourage lawsuits and encourage fair settlements on the part of the insurance companies. He stated that the bill could be amended to cover attorney fees, reciprocally, and to either omit lines 4 and 5 on page 2, or clarify that they refer only to property damage.

Senator Towe spoke briefly in support of the bill.

Glen Darke, representing the American Insurance Association, spoke in opposition, stating that nuisance suits, which are insurance companies' most costly item, would be increased by passage of the bill. He also felt that it was unnecessary because of presently existing laws administered by the Insurance Commissioner covering unfair trade practices and comparative negligence.

Roger McGlenn, of the Independent Insurance Agents Association of Helena, also spoke in opposition to the bill.

DISPOSITION OF SENATE BILL 319:

Senator S. Brown moved that the bill be amended according to the attached Committee Report, and the amendment was unanimously approved. Senator S. Brown then moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 316:

Senator S. Brown moved that the bill be amended according

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/05/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: William L. Romine DATE: 2-5-81

ADDRESS: P.O. Box 1691, Elgin

PHONE: 742-0800

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: S.B. 238

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: The purpose of this bill, is NOT, as it might seem, to encourage lawsuits. In fact, it is to discourage lawsuits. Under the present system, the insurance company is in complete control when there is only property damage. If the owner's car is damaged in the sum of $1,500, the insurance company can offer $1,200, and it knows the owner won't go to court. Even if he could find a lawyer to take the case for $200, he would still be out the $200 when he went to fix the car. However, if the insurance company knew that the owner's legal fees would also be recoverable, it would be more realistic in its offers. It might be wise to amend the Bill to provide that the Def. will be awarded his attorney fees if the Pl's Judgment is equal to or less than the offer made by the Def.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

(20)

NAME: Roger McGlenn DATE: 2-5-81

ADDRESS: Box 4848 Helena, MT.

PHONE: 442-9555

REPRESENTING WHOM? PLEASE SEE CARD. Consumer/Governmental Affairs Information Council; Independent Insurance Agents Association of Helena

APPEARING ON WHICH PROPOSAL: SB-238

DO YOU: SUPPORT? _____ AMEND? No Position OPPOSE? _____

COMMENTS: REMINDING THE COMMITTEE OF THE CONSUMER PROTECTION DIVISION OF THE STATE INSURANCE COMMISSIONER. TO URGE THE USE OF THIS DIVISION BEFORE GOING TO COURT.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

20

DISPOSITION OF SENATE BILL 222

Senator O'Hara moved that amendments 1, 3, 4, 5, 6, 7, and 8 on the attached Committee Report be approved. This motion carried unanimously.

Senator S. Brown moved for adoption of amendment 9 on the attached Committee Report and his motion passed unanimously.

Senator Mazurek moved that the eleventh amendment from the attached Committee Report include Section 2, and his motion carried unanimously. He then moved that the second and tenth amendments on the attached Committee Report be adopted, and his motion carried over Senator Crippen's opposition.

Senator B. Brown then moved that the bill DO PASS AS AMENDED, and the bill passed with Senator Berg in opposition.

DISPOSITION OF SENATE BILL 238

Senator S. Brown moved that the committee adopt the sixth amendment as shown on the attached Committee Report, and the motion carried.

Senator Mazurek moved that the first and second amendments on the attached Committee Report be adopted, and his motion passed unanimously.

Senator S. Brown moved that the fifth, seventh, and eighth amendments on the attached Committee Report be adopted, and his motion carried with Senator Anderson in opposition.

Senator S. Brown then moved that the committee adopt the third and fourth amendments on the attached Committee Report, and his motion passed with Senator Olson abstaining and Senator Crippen in opposition.

Senator Berg moved that the bill DO PASS AS AMENDED, and his motion carried with Senators Mazurek, Crippen, and Anderson in opposition.

Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/07/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)			✓

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 7, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 238

Respectfully report as follows: That SENATE Bill No. 238

be amended as follows:

1. Title.
Following: line 5
Insert: "FOR PROPERTY DAMAGE"

2. Page 2, line 4.
Following: "arising"
Insert: "for property damage to a motor vehicle"

3. Page 2, line 12.
Following: "."
Insert: "(1)"

4. Page 2.
Following: line 12
Insert: "property"

DO PASS

JRF

continued

Chairman.

STATE PUB. CO.
Helena, Mont.

February 7, 19 81

5. Page 2, line 13.
Following: "damages"
Strike: "for the damage to or the loss of
Insert: "arising out of the ownership, maintenance or"

6. Page 2, line 14.
Following: "judgment"
Insert: "equal to or"

7. Page 2, lines 15 and 16.
Following: "amount"
Strike: "remainder of line 15 through "by" on line 16
Insert: "of damages claimed by the plaintiff in his last written offer to the defendant or"

8. Page 2.
Following: line 24
Insert: "(2) If the plaintiff secures a judgment equal to or greater than the amount offered to the plaintiff by the defendant or by his agent prior to the filing of the cause of action, the court shall allow, as part of the costs, defendant's reasonable attorney's fee, which shall be fixed by the court, notwithstanding any agreement between the parties to the contrary.

JRF

And, as so amended,
DO PASS

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE JUDICIARY

Date February 7, 1981 SENATE Bill No. 238 Time 12:45 p.m.

NAME	YES	NO
Anderson, Mike		✓
O'Hara, Jesse A.	✓	
Olson, S. A.		
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Tveit, Larry J.	✓	
Brown, Steve	✓	
Berg, Harry K.	✓	
Mazurek, Joseph P.	✓	
Halligan, Michael		

Robin Campbell
Secretary

Chairman

Motion: Motion to amend bill in title, line 5, by inserting "for property damage" at the end of the line; and by inserting "for property damage to a motor vehicle" following "action" on page 2, line 4.

(include enough information on motion--put with yellow copy of committee report.)

carried with Senator B. Brown abstaining and Senators Anderson, Crippen and Halligan opposed.

DISPOSITION OF SENATE BILL 381:

Senator Halligan moved the first two amendments on the attached Committee Report, and his motion carried with Senator Mazurek opposed. Senator Halligan moved the third and fourth amendments on the attached Committee Report, and his motion carried unanimously. Senator Mazurek moved the fifth amendment on the attached Committee Report, and his motion carried unanimously.

Senator Halligan moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 335:

Senator Crippen moved that the committee adopt the amendments on the attached Committee Report, and his motion carried unanimously. He then moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 315:

Senator Mazurek moved that this bill be placed on the table, and his motion carried unanimously.

DISPOSITION OF SENATE JOINT RESOLUTION 9:

Senator Berg moved that the resolution be tabled. His motion carried over the opposition of Senators Crippen, Anderson, O'Hara, and B. Brown.

Senator S. Brown moved to reconsider the motion to table and moved that the committee adopt the amendments shown on the attached Committee Report. His motion on the amendments carried unanimously. Senator S. Brown then moved to table the resolution. His motion failed, with Senators Anderson, O'Hara, Olson, B. Brown, Crippen and Tveit voting against it.

Senator Crippen moved that the resolution DO PASS AS AMENDED, and his motion carried over the opposition of Senators S. Brown, Berg, Mazurek, and Halligan.

DISPOSITION OF SENATE BILL 238:

Senator Anderson moved to amend the bill on page 3 by reinserting the original language stricken in lines five through eleven. Senator S. Brown offered a substitute motion that the committee accept the second reading bill minus subsection (2) on page three, as well as amending subsection (7), lines five and six on page two, by striking "to a motor vehicle". This motion carried over Senator Crippen's opposition.

Senator Mazurek moved to amend line 22, page 2, by striking ", as part of the costs,". This motion passed unanimously.

Senator S. Brown moved that the bill DO PASS AS AMENDED, and his motion carried over Senator Crippen's opposition.

DISPOSITION OF SENATE BILL 329:

Senator Mazurek moved that the bill DO NOT PASS, and his motion carried over Senator Halligan's opposition.

DISPOSITION OF SENATE BILL 334:

Senator Olson moved that the bill DO PASS, and his motion carried over Senator Berg's opposition.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/19/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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STANDING COMMITTEE REPORT

February 19, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 239

Respectfully report as follows: That SENATE Bill No. 239

second reading copy, be amended as follows:

1. Page 2, line 5 through line 6.
Following: "DAMAGE" on line 5
Strike: line 5 through "VEHICLE" on line 6.

2. Page 2, line 22.
Following: "allow"
Strike: ", as part of the costs,"

3. Page 3, lines 5 through 11.
Strike: Subsection (2) in its entirety.

And, as so amended,

DO PASS

Mike Anderson

Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

47th Legislative Session

1981

Kerry Keyser, Chairman

Hubert Abrams

Gary Bennett

Alison Conn

Fritz Daily

Tom Hannah

Dennis Iverson

John Matsko

Art Shelden

Dan Yardley

Carl Seifert, Vice Chairman

Bob Anderson

Dave Brown

Aubyn Curtiss

Ralph Eudaily

Herb Huennekens

Michael Keedy

Jean McLane

Wes Teague

Jim Lear, Legislative Council

Maureen Richardson, Committee Secretary

JUDICIARY COMMITTEE

47 Legislature

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
219	Amending 46-18-201 to generally revise sentencing laws.	3/2/81	Towe	3/23/81	Do Pass as Amended 3/26/81	3/26/81
238	Providing court costs and attorney fees to a successful plaintiff in action involving vehicle ownership, use-etc.	3/2/81	Story	3/20/81	Do Pass as Amended 3/25/81	3/25/81
240	Establishing standards for collection, use and disclosure of information gathered in insurance transactions.	3/2/81	Hazelbaker	3/20/81	Do Pass as Amended 3/24/81	3/24/81
246	Requiring replacement value of a motor vehicle to be the measure of damages.	3/2/81	Story	3/19/81	Do Pass 3/26/81	3/26/81
253	To amend the laws relating to child abuse/neglect and protective services.	3/2/81	Regan	3/20/81	Do Pass as Amended 3/27/81	3/27/81
272	Generally revising the procedures for the issuance of a warrant for distraint by the Department of Revenue.	3/2/81	Mazurek	3/23/81	Do Pass As Amended 3/28/81	3/28/81

This does not mean the whole state will come down on the parents. There are some avenues provided for the child to be protected.

REP. ANDERSON asked about page 4, line 12. SENATOR REGAN replied that takes it into the criminal code. Section 45-5-625 deals with using a child for pornography purposes.

REP. KEEDY asked what was limited custody. It was replied limited custody is the same as permanent custody.

There was no further discussion on the bill.

SENATE BILL 238 SENATOR STORY, chief sponsor, stated this bill's purpose is to provide court costs and attorney's fees to a successful plaintiff in action involving vehicle ownership. This would permit an individual to obtain attorney fees in fender-benders where there was no personal loss or bodily injury. If the party at fault could not give the individual a satisfactory settlement and the individual prevails at trial, the plaintiff would be able to recover his attorney's fees and costs. Occasionally an individual deals with an insurance company that knows if the individual has $800 worth of damage and the company offers him $400, he will likely accept the money instead of going to court where it will cost him more.

WILLIAM ROMINE, representing the Wrecking Yards, was in support of the bill. EXHIBIT 1. ROMINE stated last session there was a similar bill that needed much work and modification.

If your car is damaged $1,200 to $1,500 the insurance company offers you whatever they want to. Most lawyers will not take the case for $200-$300 and you are still out the money. You are supposed to be made whole by this but it just does not happen. As a general matter, the policy covers only so much. The theory of insurance is to spread the risk of loss. If I am at a stop sign and someone rearends my car, I should be able to have my car fixed and not pay anything. I could sue but I should not be required to go to court to get the money and then have to pay a lawyer. The purpose of the bill is to stop lawsuits and policy holders' dissatisfaction. If this bill will require increased premiums it will be worth it.

There were no further proponents.

PAUL KELLER, American Insurance Association, was opposed to the bill. This will put the adjuster in a position to pay damages that are not fair. The insurance companies hire people that know this. Estimates are received from garages. The insurance companies are required to pay the market value of the car, which is what it should be. If an individual put in a new motor he would want to get paid an increased amount. It is hard to say the car is worth $2,000 when the market value is only $900. It is the

same situation with a new car. The moment it is driven off the lot it is worth less. Most of the losses insurance companies experience are from fender-benders. KELLER gave out EXHIBIT 2.

The law requires everyone to carry insurance. People have to buy insurance that is affordable for their income. A State Farm Insurance vice-president told KELLER if they could save $1.00 on every fender-bender they would not have lost money. Most insurance money goes towards this.

BOB JAMES, State Farm Insurance, was opposed to the bill. He felt it was a "one-edged sword". The defendant is not entitled to attorney's fees. This will discourage litigation if that is the case. Courts presently do award attorney's fees to the winner in many cases. This bill is in the middle of the road as it only allows attorney's fees to the plaintiff if he is successful. Two lawsuits will result from each case, one to determine whether an offer was made.

JAMES stated if he were the plaintiff's attorney he would call the insurance company and tell them he received an estimate. He would want an offer by 5:00. There would be no way the agent could respond in that short of time. The plaintiff would then go to court and sue that afternoon for attorney's fees. Sometimes the liability is not clear as to which party is at fault. There are present laws on the books. The Unfair Trade Act is to settle cases for what they are worth. Punitive damages are intended to punish someone. This bill is unfair because it enriches the plaintiff and punishes the defendant.

BOB PETERSON, United Pacific, was also against the bill. The existing law can govern any individual practice as they might occur. This attorney's relief act is not necessary when other tools are available. PETERSON's company handles a number of plaintiff cases. This bill will unduly confuse those costs. The solution is to go through the commissioner's office.

Most policies cover $10,000 property damage liability. Thirty percent have a market value in excess of that. The price of cars is getting so high it does not cover the damages.

There were no further opponents.

ROMINE was allowed to close for SENATOR STORY, who was at another hearing. ROMINE stated presently the plaintiff has no choice but to accept the offer from the insurance company. This will encourage settlements. The insurance companies have always advertised that it is the "bigshots" that make the premium rates go up, and now they say it is the fender-benders.

REP. MATSKO asked the difference between market value and the actual value of a car. ROMINE stated it should be the same. To obtain blue book all the cars in that class are taken and divided to receive a price. KELLER stated it would be whatever price it would sell in that particular community. The average is not used to determine the settlement. The car might be in extra good or poor condition. Mileage comes into effect also. If a new engine were placed in an older car, that would make the car worth more.

REP. DAILY asked if insurance companies have attorneys on their staff to handle these cases. JAMES replied most companies do not have attorneys on their staff; they instead hire from private firms. Many times, however, these cases are in small claims court and the insurance companies cannot hire attorneys for that.

REP. DAILY asked if the attorneys have a retainer basis with the insurance companies. JAMES replied it is usually a case-by-case basis. REP. DAILY further asked if the attorney's fees are paid by the insured motorist through premiums. JAMES did not know, but felt it was an expected cost. REP. DAILY felt the single-edged sword was on the insurance company's side because of the cost of the premium.

REP. CURTISS asked if her car is insured and it is hit would she have to go to court to collect. ROMINE stated if she knew who hit the car the insurance company would tell her to try to collect it on her own first. If she could not then the insurance company would try. If the insurance company does not pay what is a sufficient amount, you would have to sue someone.

REP. SHELDEN asked about the deductible. KELLER replied a reduced premium is given the higher the deductible. It is used now but it does not correct the problem. The physical damage will depend on the value of the car. Most family people do not want to have a big deductible. REP. SHELDEN asked if the difference in premiums is enough to make people interested in deductibles. KELLER did not have an answer.

REP. MATSKO asked if it is difficult for the plaintiff to collect more than he could demonstrate damages. JAMES stated no. You cannot recover more damages than you have asked for in the complaint. REP. MATSKO stated the last written offer prior to taking the person to court were used he would deflate the cost as to a lower amount or increase the cost of the damages when he goes to court. JAMES replied it is a factual determination of what the car is worth. REP. MATSKO stated if in good faith an offer is made for the cost of repair and it is turned down he will have to inflate that cost in order to receive attorney's fees. JAMES stated if

one party was 60% at fault and the other party 40% at fault comparative negligence would be used.

REP. YARDLEY stated in condemnation cases attorney fees are automatically paid for. Is that unfair? JAMES did not know. REP. YARDLEY stated some insurance companies offer 80% payment. JAMES stated he has not seen that in any insurance company since he has been in practice. If a client had a parked car that was hit, he could sue for punitive damages and report this to the commissioner. The insurance company would pay immediately and go after the insurance company of the party that struck the car. The victim would not have to go after him.

REP. CONN asked how many cases that go to court are won. ROMINE replied he had no way of knowing. PETERSON stated he has lost one case in ten years, but 99% of the cases had some type of bodily injury.

REP. CURTISS asked how many cases are settled out of court. ROMINE felt most of them are. REP. CURTISS asked what the minimum cost of suing would run. ROMINE felt it would be at least $500.00.

REP. TEAGUE asked about estimates from repair shops. PETERSON stated most repair estimates are not firm. Normally the method is to take care of the part price. The adjustors work with the firm price. REP. TEAGUE stated that repair damages would increase if the damages were not paid at the time of the accident. ROMINE stated the law presumes the damage as of the time of the accident.

REP. KEEDY asked if it was necessary to plead and prove the last best offer. ROMINE responded yes, and that is why there should be only one lawsuit. REP. KEEDY stated page 3 does not provide the defendant or his agent reasonable time. ROMINE agreed the defendant should be given time to respond. REP. KEEDY asked how realistic it is to expect the insurance commissioner's office to be brought into every case. ROMINE stated not from his experience would it be realistic.

REP. KEEDY asked what has to be shown to prove punitive damages. It was replied by ROMINE that fraud or a malicious intent. The state commissioner would not be able to take on the big insurance companies. If the plaintiff could prove that the best offer by the insurance company was lower than what the damages were they could sue.

REP. DAILY asked how many complaints the commissioner's office gets a year. Although the exact figure was not known, it is over 2,500. The commissioner does encourage the public to come to them prior to suing. About 800 are resolved in favor of the plaintiff.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 238 Date 3/20/81

SPONSOR Story

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP POS
Bob Gilles	Great Falls	State Farm		✓
William Rosine	Helena	Wheeling Yards	✓	
Ken Peterson	Havre	Chamber Pacific		✓
Gail Kelly	Helena	Gimex Montana		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33

EXHIBIT 1

NAME William L. Romine BILL No. S.B. 238

ADDRESS P.O. Box 1691 Helena DATE 3-20-81

WHOM DO YOU REPRESENT wrecking yards

SUPPORT x OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill will require that the insurance company give Reasonable settlements in vehicle accidents. People can not afford To hire a lawyer in the small fender bender case. However, under this bill, the insurance company will be more Realistic, since it could be faced with attorney fees if a suit is filed. This bill is designed to prevent, not encourage suits.

FORM CS-34
1-81

commission's attention. There is usually publicity. The real problem is the difficulty in distinguishing the documents that do not relate to the action of the supreme court. It heightens the distrust.

REP. KEEDY stated if the material is available, it is in the public's interest and the judge's interest to have that information available relating to charges regardless of whether the commission requires disciplinary action. What if the commission is not doing the job? SENATOR BROWN stated he was not sure what the commission allows the judge to talk about. REP. HANNAH asked what the rationale is for not opening these hearings to the public. SENATOR BROWN stated often times losing parties will state things that did not happen. There must be a way of distinguishing between the mad litigant who lost and a valid complaint. REP. HANNAH felt that came with the territory of being a judge.

SENATE BILL 289 SENATOR LEE, sponsor, stated this bill's purpose is to require the attorney general to challenge federal laws that impair taxing authority or autonomy of the state. EXHIBIT 7.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. YARDLEY asked if the Attorney General already had this authority. SENATOR LEE said it could be assumed that but this is not duplicating language.

There were no further questions.

EXECUTIVE SESSION

SENATE BILL 289 REP. SEIFERT moved do pass.

REP. KEEDY objected to the motion because the Attorney General already has the authority to do this and it would add material to the codes that is unnecessary. REP. YARDLEY agreed.

The motion of do pass failed with TEAGUE, CURTISS, MCLANE, HANNAH and MATSKO the only members voting for the bill. REP. IVERSON moved to reverse the vote to do not pass. The motion carried with TEAGUE, CURTISS, MCLANE, HANNAH, and MATSKO opposing.

SENATE BILL 238 REP. CONN moved do pass. She stated there are several good points in the bill. Insurance companies may give lesser estimates knowing the court costs would make the individual come out even or behind. Having no recourse, you have to accept what they refund.

REP. YARDLEY stated it is possible to go to the Justice of the Peace Court without an attorney. He felt the bill is restrictive.

REP. DAILY spoke against the motion of do pass. The idea of the bill is good but the practicality is not feasible. It will raise insurance rates.

REP. MATSKO stated lines 18-20 on page 2 indicate a plaintiff would give written offer to the insurance company. If the company does not accept that his only alternative is to try to prove it cost more in order to get a close amount to the original cost. No court costs would be allowed unless he would inflate his claims. The original language of the bill is better.

REP. KEEDY spoke in favor of the motion. The rates will go up because the purpose of the insurance company is to prevent losses. If we are doing something more equitable it should go up. This is not a lawyer's relief bill. It will keep lawyers out of the business of cost assuming business. This is a good bill.

REP. KEEDY moved to add in section 3 after "OR" on line 20 the time response period of "15" days. The motion carried unanimously.

REP. KEEDY moved section 3, page 2 should be amended to best offer from plaintiff to the defendant and to develop language that would key to the last offer on both sides. REP. CONN stated it is included in the premiums and to offer that type of amendment the double-edged sword comes into play. It is an unfair advantage of what they already have. REP. KEEDY responded if an award that is given by the jury or the court is closer to plaintiff's damages than the defendant's then attorney's fees and costs would be awarded to the plaintiff. If it is the other way around the defendant should be awarded.

The motion resulted in a roll call vote. Those voting yes were: SEIFERT, BENNETT, CURTISS, HANNAH, MATSKO, ANDERSON, ABRAMS, HUENNEKENS, KEEDY and BROWN. Those voting no were: KEYSER, CONN, IVERSON, DAILY, TEAGUE, and YARDLEY. The motion carried 10 to 6.

REP. CURTISS urged the committee to pass the bill. It is almost impossible to go to court for less than $500. Most companies settle out of court when they find out court action will be taken.

REP. HUENNEKENS stated lines 23-25 on page 2 are not necessary. REP. HANNAH spoke against the bill. This will not help the consumer. This is not a great difference to the minority of people who have been in wrecks. Under this legislation it will increase all the consumers across the state and it will encourage out of court settlements.

REP. IVERSON said this is making a mistake to encourage out of court settlements. Insurance companies will take the cheapest way out. They will settle the difference in their rates. REP. CONN responded this will give settlements that are equitable. It will make the insurance company more responsible with claims.

REP. CURTISS stated we should get what we pay for. We should not have to forfeit out $200 deductible. This bill put a burden on the insurance company. REP. SEIFERT stated a lot of insurance companies never give a decent settlement unless they are threatened to go to court.

The motion of do pass as amended was made by REP. CONN. The motion resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, EUDAILY, IVERSON, MATSKO, ANDERSON, ABRAMS, KEEDY and TEAGUE. Those voting no were: HANNAH, MCLANE, DAILY, HUENNEKENS, YARDLEY and BROWN. The motion of do pass as amended carried 12 to 6. REP. SEIFERT was assigned to carry the bill.

The meeting adjourned at 10:50 a.m.

Kerry Keyser - Chairman

KERRY KEYSER, CHAIRMAN

mr

HOUSE JUDICIARY 3/25/81

Respectfully report as follows: That SENATE Bill No. 238

BE AMENDED AS FOLLOWS:

1. Title, line 5.
Following: "A"
Strike: "SUCCESSFUL PLAINTIFF"
Insert: "PARTY"

2. Page 2, line 7.
Following: "vehicle"
Insert: "if he is entitled to attorney's fees under [section 3]"

3. Page 2, line 18.
Following: line 17
Strike: "EQUAL TO OR greater than"
Insert: "closer in value to"

4. Page 2, line 20.
Following: "agent"
Insert: "than the amount contained in the defendant's last written offer to the plaintiff"

5. Page 2, line 25.
Following: "."
Insert: "If the reverse is true of the plaintiff's judgment in relation to his and the defendant's last offer or if the defendant prevails at trial, the court shall allow defendant's reasonable attorney's fee, which shall be fixed by the court."

6. Page 3, line 1.
Following: "offer"
Strike: ", after having been"
Insert: "within 15 days of the date"

7. Page 3, line 2.
Following: "plaintiff,"
Strike: "before the filing of"
Insert: "the plaintiff may file"
Following: "action"
Strike: ", the"

8. Page 3, line 3.
Following: line 2
Strike: "plaintiff"
Insert: "and"

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 238

(Report No. 1, April 15, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 238, met April 15, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated March 25, 1981, and recommend as follows:

That the House recede from Committee amendment nos. 1 and 3 through 5;

That the Senate accede to Committee amendment nos. 2 and 6 through 8;

That Senate Bill No. 238 be further amended as specified in CLERICAL INSTRUCTION no. 5;

That the reference copy of Senate Bill No. 238 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Committee Report to Senate Bill No. 238 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 5.
Following: "~~PLAINTIFF~~"
Strike: "PARTY"
Insert: "SUCCESSFUL PLAINTIFF"

2. Page 2, line 19.
Following: "~~than~~"
Strike: "CLOSER IN VALUE TO"
Insert: "equal to or greater than"

3. Page 2, lines 22 and 23.
Following: "agent"
Strike: "THAN THE AMOUNT CONTAINED IN THE DEFENDANT'S LAST WRITTEN OFFER TO THE PLAINTIFF"

4. Page 3, lines 2 through 7.
Following: "contrary."
Strike: all underlined language.

April 16 19 81

FREE CONFERENCE COMMITTEE REPORT NO. 1
Page 2 SENATE BILL NO. 238

5. Page 2, line 5.
Following: "action"
Insert: "for property damage"
Following: "arising"
Strike: "FOR PROPERTY DAMAGE"

FOR THE SENATE:

Story, Chairman

Mazurek

Towe

FOR THE HOUSE:

Eudaily, Chairman

Conn

Daily